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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,742	03/16/2004	Aaron Q. Johnson	27683-011	1162
29315 7590 02/26/2009 MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO PC ONE FINANCIAL CENTER BOSTON, MA 02111				
EXAMINER				
GOODCHILD, WILLIAM J				
ART UNIT		PAPER NUMBER		
2445				
MAIL DATE		DELIVERY MODE		
02/26/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/800,742

Applicant(s)

JOHNSON ET AL.

Examiner

WILLIAM J. GOODCHILD

Art Unit

2445

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/05/2009 has been entered.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-27 are directed to a "system" and "method" but fails to recite any hardware elements in the claim, wherein the "means" instance of the claim are depicted as software per se, which renders the claim solely as a software implementation and non-statutory for failing to satisfy a statutory category. In order for a claim to be statutory, it

must fall within a process, machine, manufacture, or a composition of matter. Software does not fall within a statutory category since it is not a series of steps or acts to constitute a process, not a mechanical device or combination of mechanical devices to constitute a machine, not a tangible physical article or object which is some form of matter to be a product and constitute a manufacture, and not a composition of two or more substances to constitute a composition of matter.

To qualify as a 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example, by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example, by identifying the material that is being changed to a different state.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-11, 18 and 21-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herland et al., (US Publication No. 2003/0018747), (hereinafter Herland), and further in view of Cohen et al., (US Patent No. 7,035,926), (hereinafter Cohen).

Regarding claims 1, 18 and 25, Herland discloses wherein the web page that the user is accessing and each of the other web pages comprise any web page on the Internet [Herland, paragraph 25, line 4 and lines 6-8, viewed web pages may be on the intranet or over the Internet];

displaying for the user a listing of other users determined to be within a predetermined virtual distance from the web page that the user has accessed [Herland, paragraph 25, lines 9-17 and figure 1B, the predetermined distance is the same web page]; and enabling the user to communicate with one or more of the other users from the displayed listing [Herland paragraph 32, lines 1-6].

Herland does not specifically disclose calculating a virtual distance between a web page that a user is accessing and other web pages accessed by other users.

However, Cohen, in the same field of endeavor discloses mapping, so as to identify the places (web pages) and the links between them, when users access any of the virtual places, the user's virtual locations are tracked [Cohen, column 2, lines 30-39] on a particular Web site or Web page [Cohen, column 1, lines 38-40]. Based on this information, a user is able to determine that another user or users are visiting a Web page of interest to the given user or to join those other users for a chat in the context of the Web page [Cohen, column 2, lines 59-63].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include determining the virtual distance between two or more

users in order to facilitate situation awareness on the Internet and allow users interested in the same fields to communicate with each other.

Regarding claim 2, Herland-Cohen further discloses receiving a Uniform Resource Identifier (URI) address of the web page that the user has accessed [Cohen, column 12, lines 27-43 and figure 10].

Regarding claim 3, Herland-Cohen further discloses wherein the virtual distance is calculated using a distance mapping technique [Cohen, column 2, lines 37-43].

Regarding claim 4, Herland-Cohen further discloses wherein the distance mapping technique comprises identifying users accessing web pages having words or phrases of cognitive similarity [Cohen, column 2, lines 53-67].

Regarding claim 5, Herland-Cohen further discloses wherein the distance mapping technique comprises comparing a Uniform Resource Identifier (URI) address of the web page that the user has accessed to URI addresses of the other web pages being accessed by other users [Cohen, column 7, lines 11-20].

Regarding claim 6, Herland-Cohen further discloses displaying for the user a listing of the other users further comprises displaying the listing of other users in a graphical user interface (GUI) [Herland, figure 1B and paragraph 31].

Regarding claim 7, Herland-Cohen further discloses wherein the GUI comprises a web browser [Herland, figure 1B and paragraph 31].

Regarding claim 8, Herland-Cohen further discloses enabling the user to access profile data associated with one or more of the other users selected from the displayed listing [Cohen, column 9, lines 35-40].

Regarding claim 9, Herland-Cohen further discloses the profile data comprises one or more of contact information, demographic information, profession, hobbies, or interests [Cohen, column 9, lines 35-40, contact information].

Regarding claim 10, Herland-Cohen further discloses enabling the user to communicate with one or more of the other users selected from the displayed listing further comprises enabling the user to instant message one or more of the other users selected from the displayed listing [Cohen, column 12, lines 27-44].

Regarding claim 11, Herland-Cohen further discloses enabling the user to communicate with one or more of the other users selected from the displayed listing further comprises enabling the user to e-mail one or more of the other users selected from the displayed listing [Herland, paragraph 25].

Regarding claim 21, Herland-Cohen further discloses identifying the web page that the user is accessing [Herland, paragraph 25].

Regarding claim 22, Herland-Cohen further discloses determining the presence of other users at or near the web page that the user is accessing [Herland, paragraph 25].

Regarding claim 23, Herland-Cohen further discloses means for identifying the web page that the user is accessing [Herland, paragraph 25].

Regarding claim 24, Herland-Cohen further discloses means for determining the presence of other users at or near the web page that the user is accessing [Herland, paragraph 25].

Regarding claim 26, Herland-Cohen further discloses tracking the virtual location of the user and each of the other users anywhere on the Internet [Herland, paragraph 25].

Regarding claim 27, Herland-Cohen further discloses means for tracking the virtual location of the user and each of the other users anywhere on the Internet [Herland, paragraph 25].

5. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herland-Cohen as applied to claim 1 above, and further in view of Wengrovitz, (US Publication No. 2005/0141688).

Regarding claim 12, Herland-Cohen does not specifically disclose enabling the user to communicate with one or more of the other users selected from the displayed listing further comprises enabling the user to initiate a voice over Internet protocol (VoIP) communication with one or more of the other users selected from the displayed listing. However, Wengrovitz, in the same field of endeavor, discloses presence notification [Wengrovitz, paragraph 6, lines 6-13] with VoIP [Wengrovitz, paragraph 5, lines 8-14]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate voice over Internet Protocol communication via presence notification listing in order to increase the multi-media communication options on-line.

6. Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herland, and further in view of Wicks, (US Publication No. 2004/0049732).

Regarding claim 19, Herland discloses identifying a data object that a user is accessing [Herland, paragraph 25, lines 4-7];

determining a listing of other users that are currently accessing or that have recently accessed the data object [Herland, paragraph 25, lines 9-17 and figure 1B, the predetermined distance is the same web page];
displaying the listing of the other users [Herland, paragraph 25, lines 9-17 and figure 1B, the predetermined distance is the same web page]; and
enabling the user to communicate with one or more of the other users selected from the displayed listing [Herland paragraph 32, lines 1-6].

Herland does not specifically disclose filtering the listing of other users based on an affinity between data associated with the user and data associated with the other users. However, Wicks discloses filtering based on data elements of a selected attribute, or on a value or criteria [Wicks, paragraph 29].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include filtering of the list in order to allow the user the ability to determine those other users who they may like to discuss their interests with.

Regarding claim 20, Herland-Wicks further discloses wherein the affinity between the data associated with the user and data associated with the other users is determined using similarity of profile attributes [Wicks, paragraphs 29 and 123].

7. Claims 13-14 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herland-Cohen as applied to claim 1 above, and further in view of Nachman et al., (US Publication No. 2001/0027474), (hereinafter Nachman).

Regarding claim 13, Herland-Cohen further discloses enabling the user to communicate with one or more of the other users selected from the displayed listing further comprises enabling the user to initiate a transaction with one or more of the other users selected from the displayed listing [Nachman, paragraphs 18 and 21].

Regarding claim 14, Herland-Cohen further discloses the transaction comprises an exchange of currency [Nachman, paragraph 45].

Regarding claim 16, Herland-Cohen further discloses enabling the user to execute a search query against a search engine [Nachman, paragraph 20].

Regarding claim 17, Herland-Cohen further discloses results of the search query comprise a listing of one or more web pages, and wherein each of the one or more web pages listed is displayed with an associated visual indicator displaying a number of users currently accessing that respective web page [Nachman, paragraph 40].

8. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herland-Cohen-Nachman as applied to claim 13 above, and further in view of Pugliese III et al., (hereinafter Pugliese), (US Publication No. 2001/0016825).

Regarding claim 15, Herland-Cohen-Nachman does not specifically disclose the transaction comprises an exchange of at least one of airline frequent flier miles, or affinity program points.

However, Pugliese, discloses charging frequent flier miles [Pugliese, paragraph 65, lines 11-19].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate frequent flier miles as a financial transactions to increase the client's options for financial payments.

Response to Arguments

9. Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Examiner's Note: Examiner has cited particular paragraphs / columns and line numbers in the reference(s) applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the cited passages as taught by the prior art or relied upon by the examiner.

Should applicant amend the claims of the claimed invention, it is respectfully requested that applicant clearly indicate the portion(s) of applicant's specification that support the amended claim language for ascertaining the metes and bounds of applicant's claimed invention

Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM J. GOODCHILD whose telephone number is (571)270-1589. The examiner can normally be reached on Monday - Friday / 8:00 AM - 4:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached on (571) 272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patrice Winder/
Primary Examiner, Art Unit 2445

WJG
02/17/2009